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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/804,238

03/19/2004

Jens Ole Brochner Andersen

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08/15/2007

WINSTON & STRAWN LLP

PATENT DEPARTMENT

1700 K STREET, N.W.

(WASHINGTON, DC 20006

EXAMINER

VANATTA, AMY B

ART UNIT

PAPER NUMBER

3765

MAIL DATE

DELIVERY MODE

08/15/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/804,238

Applicant(s)

ANDERSEN, JENS OLE
BROCHNER

Examiner

Amy B. Vanatta

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 March 2007 and 28 March 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 and 24-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 24-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☐ Certified copies of the priority documents have been received.
 - 2) ☒ Certified copies of the priority documents have been received in Application No. 09/529,362.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☒ Interview Summary (PTO-413)
Paper No(s)/Mail Date. 06142007.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. Applicant's amendment filed 3/28/07 has been entered. The finality of the rejection of the last Office action is hereby withdrawn, in view of the new grounds of rejection set forth below.

Reissue Oath/Declaration

2. The reissue oath/declaration filed on 3/19/04 is defective because it fails to identify at least one error which is relied upon to support the reissue application. See 37 CFR 1.175(a)(1) and MPEP § 1414. That is, the declaration filed 3/19/04 does not sufficiently specify the error upon which the reissue is based. See MPEP § 1414, which states in part:

All that is needed for the oath/declaration statement as to error is the identification of "at least one error" relied upon. In identifying the error, **it is sufficient that the reissue oath /declaration identify a single word, phrase, or expression in the specification or in an original claim, and how it renders the original patent wholly or partly inoperative or invalid.**

It is not sufficient for an oath /declaration to merely state "this application is being filed to correct errors in the patent which may be noted from the changes made in the disclosure." Rather, the oath /declaration must specifically identify an error. In addition, it is not sufficient to merely reproduce the claims with brackets and underlining and state that such will identify the error. See *In re Constant*, 827 F.2d 728, 729, 3 USPQ2d 1479 (Fed. Cir.), cert. denied, 484 U.S. 894 (1987). **Any error in the claims must be identified by reference to the specific claim(s) and the specific claim language wherein lies the error. A statement of " ... failure to include a claim directed to ..." and then presenting a newly added claim, would not be considered a sufficient " error" statement since applicant has not pointed out what the other claims lacked that the newly added claim has, or vice versa.** Such a statement would be no better than saying in the reissue oath or declaration that " this application is being filed to correct errors in the patent which may be noted from the change made by adding new claim 10." In both cases, the error has not been identified.

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Applicant's declaration states that the '773 patent is wholly or partly inoperative by reason of applicant claiming less than he had a right to claim. This means that applicant failed to claim broader subject matter. However, the claims as presently amended are all narrower in scope than those of the '773 patent, and thus the declaration should state that applicant claimed *more* than he had a right to claim. Also, applicant's declaration fails to sufficiently and specifically state the error which required the amendment to claim 6 and/or the presentation of claim 24, as these claims are currently amended.

3. Claims 1-11 and 24-27 are rejected as being based upon a defective reissue declaration under 35 U.S.C. 251 as set forth above. See 37 CFR 1.175.

The nature of the defects in the declaration are set forth in the discussion above in this Office action.

Claim Rejections - 35 USC § 112

4. Claims 11 and 27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 11 is rendered indefinite by the recitation that the top, bottom, and middle layers "are produced according to claim 6". Firstly, claim 6 is a product claim (i.e. product-by-process) and thus the recitation that the product of claim 11 is "produced according to claim 6" is confusing. Also, claim 11 does not appear to incorporate all of

the limitations of claim 6 and thus is an improper dependent claim. See, for example, claims 7-10, also dependent on claim 6, which are correctly drawn to a "nonwoven fabric according to claim 6".

Claim 27 is rendered indefinite by the recitation of a nonwoven fabric "produced by the plant of claim 26". Thus, the claim is a "product-by-apparatus" claim, which is not a recognized statutory class of invention. It is unclear in what manner the apparatus further limits the claimed product.

Claim Rejections - 35 USC § 102

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claim 27 is rejected under 35 U.S.C. 102(b) as being anticipated by Srinivasan et al (US 5,500,281).

Srinivasan et al disclose a three-layered hydroentangled web. See Fig. 2, in which a first unit 21 forms a bottom layer, a second unit 21 forms a middle layer, and a third unit 21 forms a top layer. The layers are successively laid on top of one another to form a three layered sandwich web, as claimed. A step of hydroentangling the web is disclosed (see col. 8, lines 45-47). Thus, a three layered hydroentangled sandwich fiber web is disclosed, as in claim 27. The recitation of the use of the plant of claim 26 to produce this product does not further limit the structure of the claimed product over that of Srinivasan.

Response to Arguments

7. Applicant's arguments filed 3/15/07 and 3/28/07 have been considered but are moot in view of the new ground(s) of rejection.

Allowable Subject Matter

8. Claims 1-10 and 24-26 would be allowable if the rejection based upon the defective reissue declaration is overcome.


Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amy B. Vanatta whose telephone number is 571-272-4995. The examiner can normally be reached on Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on 571-272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Amy B Vanatta
Primary Examiner
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